IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4208 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIRABHAI NEBHABHAI KHAMBHALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4208 of 2000

MR TUSHAR MEHTA for Petitioner No. 1

Ms NANDINI JOSHI, AGP for Respondent No. 1-2

MR MJ PARIKH for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/07/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has prayed for a writ of mandamus to direct the State of Gujarat, the Mamlatdar, Taluka Talala (Gir), District Junagadh and the Gujarat Public Service Commission to treat the petitioner as a

scheduled tribe candidate on the basis of the vigat darshak card issued by the Deputy Director of Tribal Development. The petitioner has also prayed that the respondents be directed not to insist for any other evidence from the petitioner other than the vigat darshak card.

2. At the hearing of this petition today, Ms Nandini Joshi, learned AGP appearing for respondent No. 1 and 2 and Mr MJ Parikh, learned counsel for the GPSC submit that the controversy raised in this petition is squarely covered by the decision dated 31.8.2000 of a Division Bench of this Court in Letters Patent Appeal No. 1670 of 1999 and cognate petitions wherein this Court has held as under :-

> "The burden of proof of social status is always on the person who profess it to seek constitutional socio-economic advantages and it is no part of the duty of the State to disprove or otherwise ... ... In case the vigat darshak card is produced before the concerned Committee and the Mamlatdar, they may proceed to decide the applications of the candidates claiming to be treated as members of scheduled tribe and in taking up such exercise, they may consider such vigat darshak cards as a relevant material and the entries made therein to be correct unless there is any ground or material to disbelieve the same and find those entries to be wrong or false and each case has to be decided on its own facts and the applicant will be under an obligation to furnish the necessary materials, as may be required, besides the vigat darshak card itself. ... ..."

3. In view of the above, respondent No.2-Mamlatdar, Taluka Talala (Gir), District Junagadh shall consider the petitioner's application in light of the principles laid down by the Division Bench of this Court in the aforesaid judgment. It will be open to the petitioner to produce any other evidence before the Mamlatdar. If such evidence is produced within one month from today, the Mamlatdar shall consider the same in accordance with law within one month from the date of receipt of the evidence. In case the petitioner's application was already decided during pendency of this petition, it will be open to the petitioner to make within one month from today a fresh application with the necessary material in support of the same and in light of the aforesaid judgment.

4. As regards the interim order dated 1.5.2000 passed by this Court requiring the respondents to treat the petitioner's candidature as a scheduled tribe on provisional basis for the post of lecturer in Psychology by the GPSC, Mr MJ Parikh, learned counsel states that the GPSC has kept the petitioner's result in the written test in a sealed cover. The question whether the petitioner could be called for oral interview will, therefore, depend both on the petitioner's performance in the written test and also on the question whether the petition is admittedly considered to be a scheduled tribe or not. The second aspect will have, therefore, to abide by the inquiry which the Mamlatdar will hold in light of the aforesaid judgment of this Court.

5. Subject to the aforesaid directions, the petition is disposed of. Rule is discharged with no order as to costs.

(M.S. Shah, J.)
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